In the High Court of Judicature at Madras

Dated: 17.12.2007

Coram:

The Honourable Mr.Justice S.J.Mukhopadhaya
and
The Honourable Mr.Justice M.Venugopal

Writ Appeal No.1575 of 2007
& M.P.No.1 of 2007

1. Nizamuddin
2. Dr.S.Fathima Beevi .. Appellants/Petitioners

vs.

1. The Superintending Engineer,
   Highways Administration,
   M.O.S.R.T. & H. Department of Road Transport
   and Highways,
   Chennai-600 090.

2. The Assistant Divisional Engineer,
   National Highways,
   Tiruchirapalli-20.

3. The Project Director (I/C),
   The National Highways Authority of India,
   Tiruchirapalli-1.

4. The District Collector,
   Tiruchirapalli District,
   Tiruchirapalli. .. Respondents

Writ Appeal against the order of this Court dated 7.12.2007 in W.P.No.19028 of 2007.

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WP.No.19028/07 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing them from invoking the provisions of the Control of the National Highways (Land & Traffic) Act 2002 interfering with the petitions private property in any manner including demolition of the property to the extent of 4650 Sq.ft in S.No19/1A1A1 at village No.42 Kottapattu Village, Tiruchirappalli Taluk and District without following the appropriate procedures contemplated under law and without a Rule being enacted under Section 23 and 26 of the Act 13 of 2003.

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For appellant : Mr.S.Doraisamy
For respondents : Mr.P.Wilson,
Asst. Solicitor General for RR-1 to 3
Mr.V.R.Thangavelu, Govt. Advocate for R-4

Judgment

(The Judgment of the Court was delivered by S.J.Mukhopadhaya,J)

This Writ Appeal has been preferred by the appellants/Writ Petitioners against the order of the learned single Judge of this Court, dated 7.12.2007 passed in W.P.No.19028 of 2007.

2. In Writ Petition No.19028 of 2007, a prayer was made for issuance of a Writ of Mandamus, forbearing the first respondent from invoking the provisions of the Control of the National Highways (Land and Traffic) Act, 2002, interfering with the appellants' private property in any manner, including demolition of their property to the extent of 4,650 Sq.Ft. in S.No.19/1A1A1 at Village No.42, Kottapattu Village, Tiruchirapalli Taluk and District, without following the appropriate procedures contemplated under law and without a rule being enacted under Sections 23 and 26 of the Act 13 of 2003.

3. It appears that after hearing the learned counsel appearing for the parties, the learned single Judge, by the impugned order, tried to find out the equitable solution and made the following observations:

> "29. However, taking note of the various factors under which the petitioners claim to have purchased the land in question and also the fact that they have constructed a hospital in the said land and have been concentrating in medical care in that area by incurring a considerable sum towards its construction and are also recurring day-to-day expenditure, with a view to give an equitable solution, I am of the considered view that the respondents who are the authorities under the Government of India are competent to work out whether any compensation can be paid to the petitioners, though they are not obligated under any statute but only on the ground of equity and particularly, keeping in mind the service rendered by the petitioners in the field of medicine. Accordingly, I direct the petitioners to address a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order, seeking compensation by explaining their pitiable plight and on receipt of such representation

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from the petitioners, the respondents are directed to consider and pass appropriate orders therein within a period of four weeks."

4. It appears that the appellants/Writ Petitioners jointly purchased an extent of 4,650 Sq.Ft. of land as indicated above (vide Document No.2294/2003, dated 18.10.2003 and Document No.1208/2004, dated 4.6.2004) from one Rajendran and Mohammed Siddique respectively and the said extent of land is a patta land and was in the enjoyment of the appellants/petitioners' predecessors-in-tile for several decades.

5. For National Highways, the respondents acquired certain lands and in many cases, having found encroachment of the acquired lands, they took a measure to remove the encroachment, and at that stage, the appellants moved this Court by filing Writ Petition No.1630 of 2007 against the order of the first respondent-Superintending Engineer, Highways Administration, dated 27.12.2006 in No.F.No.RW-MD/TN/HA/1/NH/45/2006, forbearing the respondents from taking any action pursuant to the said order dated 27.12.2006 for removal of the building of the appellants in the land in S.No.19/1A1A1, measuring 4,650 Sq.Ft., in Village No.42, Kottapattu Village, Tiruchirapalli Taluk.

6. Having noticed the rival contentions, a learned single Judge of this Court, vide judgment dated 24.3.2007 in W.P.No.1630 of 2007, issued the following directions:

> "The fourth respondent shall issue notice to the petitioners and Respondents 1 to 3 fixing the time and date for inspection, survey and marking of the National Highway in the property in question and thereafter direct the concerned Revenue Authorities to undertake such an exercise. If any encroachment is found, it is open to Respondents 1 to 3 to proceed against the petitioners in terms of Section 26(2) of the Act by complying with all the requirements of the provisions contained therein. The petitioners shall cooperate with the Revenue Authorities in the inspection, survey and marking of the National Highway."

7. According to the learned counsel for the appellants, though the learned single Judge in W.P.No.19028 of 2007, has accepted the land in question of an extent of 4,650 Sq.Ft., in the respective Survey No., as belonging to the appellants and the said land has not been acquired still, while working out the equitable solution, the impugned direction has been given.

8. On the other hand, learned Assistant Solicitor General appearing for the respondents 1 to 3, while referring to the earlier order passed by this Court in W.P.No.1630 of 2007, dated 24.3.2007, also placed reliance

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on the Sketch (vide page 71 of the spiral-bound typed set in this Writ Appeal) and submitted that the appellants, by constructing a Hospital in Old S.F.No.19/1A1B, have encroached the adjacent land bearing S.F.No.19/1B, marked in black ink in that Sketch. It is also found that the said land in S.No.19/1B has been acquired by the National Highways and the appellants have no right over the same.

9. In the present case, as we find that there is no dispute with regard to the land measuring 4,650 Sq.Ft., in S.No.19/1A1A1, Village No.42, Kottapattu Village, Tiruchirapalli Taluk and District, which belongs to the appellants, and the encroachment alleged to have been made is only in S.No.19/1B and a direction has already been given by this Court in W.P.No.1630 of 2007, by order dated 24.3.2007, asking the respondents to issue notice on the appellants fixing the time and date of inspection, survey and marking of the National Highway in the property in question and then to take action in terms of the provisions of law, we are of the view that the second Writ Petition, namely W.P.No.19028 of 2007, as preferred by the appellants, was uncalled for and no further direction was required to be given in the same.

10. In the facts and circumstances, while we set aside the impugned order of the learned single Judge, dated 7.12.2007 in W.P.No.19028 of 2007, we allow the respondents to proceed in accordance with the direction already given by this Court in W.P.No.1630 of 2007, dated 24.3.2007, and if any encroachment found in S.No.19/1B being made by the appellants, and if marking has been made after giving notice to the appellants, the respondents may proceed in accordance with law.

11. It is also now informed by the learned Assistant Solicitor General appearing for the respondents 1 to 3 that notice has already been given to the appellants, pursuant to which, the appellants have asked for ten days' time, vide their letter dated 25.5.2007, a copy of which has been enclosed in page 63 of the spiral-bound typed set in this Writ Appeal.

12. The Writ Appeal stands disposed of with the aforesaid observations and direction. But there shall be no order as to costs. The Miscellaneous Petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Superintending Engineer,
   Highways Administration,
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2. The Assistant Divisional Engineer,
   National Highways,
   Tiruchirapalli-20.

3. The Project Director (I/C),
   The National Highways Authority of India,
   Tiruchirapalli-1.

4. The District Collector,
   Tiruchirapalli District, Tiruchirapalli.

1 cc To Mr.P.Wilson, Asst. Solicitor General of India, SR.74577.
1 cc To Mr.S.Doraisamy, Advocate, SR.74453.
1 cc To The Government Pleader, SR.74547.

Writ Appeal No.1575 of 2007

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